

**MINUTES OF THE JANUARY 2004 MEETING
OF THE**

ADMINISTRATIVE RULES REVIEW COMMITTEE

Date of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, January 6, 2004, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative George Eichhorn, Chair; Senators Michael Connolly, John P. Kibbie, Mary Lundby, Paul McKinley, and Donald Redfern; Representatives Danny Carroll, Marcella Frevert, David Heaton, and Geri Huser.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, Assistant Editor; Brian Gentry, Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.

Convened Chair Eichhorn convened the meeting at 8:50 a.m.

MEDICAL EXAMINERS BOARD Ann Mowery, Kent Nebel, and Dr. Dana Shaffer represented the board. Other interested parties included Ed Friedmann of the Board of Physician Assistant Examiners; Jennifer Davis of the Iowa Academy of Family Physicians; and Keith Luchtel of the Iowa Medical Society.

ARC 3044B No questions on amendments to ch 10.

ARC 3045B No action on amendments to ch 13 pertaining to ethics and standards of practice.

ARC 3043B No questions on proposed amendments relating to licensure of acupuncturists.

ARC 3042B Ch 21 pertains to physician supervision of a physician assistant. Mowery reported that changes were made as a result of a meeting with Libby Coyte, a physician assistant who had submitted comments, but that the rule concerning grounds for discipline is still in contention. Mowery distributed a side-by-side comparison of the new rules and existing rules to illustrate that these disciplinary provisions are not new requirements. Shaffer stated that the board supports the practice of physician assistants, but has both the legal authority and responsibility for monitoring the practice of physicians. Shaffer reported that physician assistants have made no recommendation regarding proximity of supervisor and that, although a waiver could be granted in certain situations, no waivers have been requested in regard to supervisor availability. Mowery added that the board strongly believes that the rules are appropriate and in accordance with statute. In response to concerns raised by Connolly, Mowery clarified that, according to statute, physician assistants must be supervised by a physician, whereas ARNPs are independent practitioners.

Friedmann asserted that although the intent of the legislation was to increase access to care through physician assistants, the rules negatively affect the practice of PAs.

Huser noted that the two boards appear to have different understandings of "actively practicing medicine in Iowa," and Eichhorn stated that the boards need to improve communications with each other and clarify geographical considerations regarding supervision. Carroll commented that the rules appear to be in accordance with the statutory direction.

Luchtel reported that the Iowa Medical Society wholeheartedly supports the rules; and Davis expressed the support of the Iowa Academy of Family Physicians.

Motion to delay Kibbie moved a 70-day delay on rule 21.4 to allow time for clarification of geographical limits for supervising physicians.

Gentry observed that resolution will be difficult without the cooperation of both boards.

Motion carried The motion carried; the January 28, 2004, effective date of 21.4 is delayed for 70 days.

ADMINISTRATIVE SERVICES DEPARTMENT Carol Stratemeyer and Michael Prey represented the department.

ARC 3063B No question on transfer of rules related to offset of debts owed state agencies.

ARC 3036B No action on proposed amendments to human resource rules. Prey detailed provisions relating to pay for employees returning from leave.

ARC 3065B No questions on proposed transfer of rules pertaining to employee organizational dues.

DENTAL EXAMINERS BOARD Jennifer Hart represented the board. Peggy Funk represented the Iowa Dental Hygienists' Association.

ARC 3041B Hart reported that rule 10.5, pertaining to public health supervision of dental hygienists by dentists, was intended to improve access to dental care in Iowa and was unanimously approved by the board of dental examiners. Hart indicated that the provisions have the support of the Dental Hygienists' Association, the department of public health, and Iowa's Medicaid director; however, the Iowa Dental Association does have concerns which the board has attempted to resolve. Heaton commended the board for the detailed regulatory analysis provided in response to an informal request from the committee and commented on client responsibility in keeping appointments. Frevert encouraged continued communication and collaboration with the Iowa Dental Association. McKinley asked that results of the program be tracked and reported. Connolly expressed appreciation for the board's efforts in addressing access to dental care. Funk read written comments illustrating the dental care shortage in Iowa and supporting the rule.

ECONOMIC DEVELOPMENT DEPARTMENT Melanie Johnson, Rose Wazny, Ken Boyd, Nichole Warren, Mike Johansen, and Mike Fastenau represented the department. Howard Hagen represented the Iowa Independent Bankers.

ARC 3029B Amendments to chs 7 and 20 allow grow Iowa values fund assistance for the Iowa jobs training program and accelerated career education program. McKinley questioned the emergency filing of the amendments. Frevert noted that information regarding how community colleges intend to use the funds would be helpful.

ARC 3028B No action on ch 9, workforce training and economic development funds.

ARC 3031B Amendments to ch 23 align the CDBG program with IDED's other finance programs. Eichhorn and McKinley voiced concerns about wage thresholds and the emergency filing.

ARC 3026B No action on ch 46, endow Iowa grants program. Connolly expressed support for the program.

ARC 3027B Johansen indicated that there is much interest in the endow Iowa tax credits program, which will be operating in February.

ARC 3030B Amendments to ch 53 increase wage thresholds for the CEBA program. In response to Heaton's concern about the emergency filing, Boyd indicated that the department determined there is a benefit to the public to have the rules go into effect on January 1, 2004, but that the amendment is also published under Notice of Intended Action to solicit comments. Connolly supported the department's implementation of programs intended to improve Iowa's economy.

ARC 3035B No questions on proposed amendments to ch 59 concerning enterprise zones.

ARC 3034B Proposed ch 69 pertains to the loan and credit guarantee program. Hagen distributed written concerns of Iowa Independent Bankers who believe that guarantee language is too broad. McKinley stated concerns about the application fee, the loan fee, and the director's authority in loan approvals; Warren agreed to relate these concerns to the department. Huser commented that the program was intended to be self-sustaining, funded through loans fees rather than appropriation.

EDUCATION DEPARTMENT Carol Greta and Deb Hansen represented the department. Susan Olesen represented the Iowa Association of School Boards.

ARC 3025B No questions on termination of proposed amendments to ch 12.

ARC 2994B No questions regarding the administrative fee for out-of-state drinking driver courses.

ARC 2995B No questions on ch 34 concerning funding for children residing in state institutions or mental health institutes.

ARC 2996B No questions on ch 37, career academies.

ARC 2998B Ch 68 pertains to Iowa public charter schools. Greta reported that two applications have been received: one secondary and one elementary.

ARC 2999B Proposed amendments to the teacher quality program relate to professional development for school districts. McKinley asked how student achievement will be measured; Hansen responded that specific professional development attributes that have been shown to result in student achievement must be implemented by districts, and a district can measure growth through the summative evaluation instrument employed by the district. Frevert pointed out that learning cannot always be measured objectively on an annual basis.

Olesen expressed the support of the Iowa Association of School Boards for the rules.

ARC 2997B No questions on amendments to ch 97 concerning funding for regional academies.

ENVIRONMENTAL PROTECTION COMMISSION Jim McGraw and Brent Parker represented EPC.

ARC 3006B No questions on 22.1(2)"w," small unit exemption.

ARC 3005B No questions on emission standards for commercial and industrial solid waste incinerator units, 23.1(5)"c."

ARC 3007B No action on amendments to ch 23 regulating controlled burning of demolished buildings. Comments from the U.S. EPA were summarized; a rule making will be initiated after Iowa Code section 455B.133 is amended.

ARC 3008B No action on reauthorization of NPDES general permit no. 4, pertaining to surface discharges from onsite wastewater systems. Parker advised Lundby that county sanitarians can provide information on maintenance of sewer systems and that an informational brochure is being prepared for homeowners.

NATURAL RESOURCE COMMISSION Steve Dermand, Richard Bishop, Marion Conover, and Jim Lawson represented the commission.

ARC 3013B No questions on bait dealer licensing.

ARC 3015B No questions on amendments to ch 61, state parks and recreation areas.

ARC 3014B No action on removal of bobcat from the list of threatened species.

ARC 3011B No questions on amendments to ch 81 pertaining to sport fishing.

ARC 3010B No questions on commercial fishing for shovelnose sturgeon and silver carp.

ARC 3012B No questions on 87.2 regarding taking and possession of mussels for sport.

Natural Resource Commission (continued)

- ARC 3009B No action on proposed amendments to ch 94 concerning minimum arrow length and licenses for deer hunting. Bishop reported a reduction in deer herds.
- ARC 3016B No questions on amendments to ch 98 concerning wild turkey hunting.
- Committee business** The review of waivers and charter agencies was postponed until next month. The committee decided to excuse the ethics and campaign disclosure board and the law enforcement academy. Eichhorn formally welcomed Lundby and Huser to the committee. Redfern nominated McKinley to serve as vice chair, and Kibbie seconded the nomination. Heaton made a motion that nominations cease, and Frevert seconded the motion. The motion carried; McKinley was elected. The minutes of the December 2003 meeting were approved. The next meeting will be Monday, February 9, 2004.

REVENUE DEPARTMENT David Casey represented the department.

- ARC 2991B No questions on interest rate for 2004.
- ARC 3061B No action on proposed amendments relating to individual and corporate income tax.
- ARC 3062B No action on proposed amendments to individual income tax rules. Casey highlighted changes related to tuition and textbook credits, nonresident credits, and statute of limitations for refunds.
- ARC 3058B No action on amendments to chs 42, 52, and 58 relating to investment tax credits for equity investments in a qualifying business or community-based seed capital fund and contingent tax credits for investments in the Iowa fund of funds.
- ARC 3057B No action on amendments to chs 42, 52, and 58 concerning the endow Iowa tax credits.
- ARC 3059B No questions on amendments relating to determination of value of utility companies.
- ARC 3060B No questions on amendments relating to penalties for violations of the sale of cigarettes or tobacco products.

CREDIT UNION DIVISION Rebecca Vacco represented the division.

- ARC 2985B No action on ch 3, which establishes rules for conversion of an Iowa credit union to another charter type.

HUMAN SERVICES DEPARTMENT Kevin Concannon and Nancy Freudenberg represented the department. Other interested parties included CeCe Zenti of Healthcare Solutions, Jennifer Davis of the Iowa Academy of Family Physicians, Lorelei Heisinger of the Iowa Psychiatric Society, and Denise Hill of the Iowa Medical Society.

- ARC 3021B No action on amendments to ch 36 pertaining to the 3-tiered quality assurance assessment for nursing facilities.
- ARC 3017B No action on amendments to ch 47 expanding FIP diversion initiatives statewide.
- ARC 3023B No questions on the annual cost-of-living adjustment to SSA and Medicaid rules.
- ARC 3019B No action on reductions in SSA reimbursement rates for in-home health-related care and care in residential care facilities. Freudenberg reported that 168 RCFs and 800 of the 1600 clients receiving in-home care will be affected.
- ARC 3018B No action on amendments to ch 65, food assistance program.
- ARC 3020B Amendments to ch 78 expand prior authorization requirements and implement a preferred drug list (PDL). Freudenberg reported that because DHS has terminated its relationship with the provider that was going to administer the program, the department will be issuing an RFP and expects implementation within the next three months. Eichhorn requested copies of the informational letter to providers and the RFP. Freudenberg asked that Zenti's question about the role of CMS and the sole source contract be referred to the state's Medicaid director. Davis voiced concerns of the academy of family physicians regarding timeliness of communications, paperwork requirements, and the process for appeals. Heisinger commented that the rules need to reference the exemption for mental health medications. Hill noted that physicians are committed to the success of the program but have concerns about communications with stakeholders and the need for a timely and effective appeal process. Hill suggested that the department consider withdrawing the rules pending implementation of the program. Concannon stated that the Iowa Medicaid program spends approximately \$325 million per year on prescription drugs; the PDL and prior authorization requirements will result in significant savings to the state. Huser questioned the department's ability to meet the expected 90-day implementation schedule and urged the department to work with associations to address their concerns.

ETHICS AND CAMPAIGN DISCLOSURE BOARD ARC 3048B, ARC 3046B, and ARC 3047B were not reviewed.**LAW ENFORCEMENT ACADEMY** ARC 2978B was not reviewed.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and Jim Kenkel represented the department.

ARC 2983B Proposed amendments to ch 5 concern fire safety in adult day services programs. Coveyou reported that additional time will be made available for compliance. Frevert asked that ICN hearing sites correspond to the 15 community college locations throughout the state. Gentry indicated that the governor has a strong interest in increasing public participation and encouraged departments to make good use of the ICN.

ARC 2984B Proposed 5.626 pertains to fire safety in assisted living facilities in accordance with the 2003 Life Safety Code. The rule includes provisions for facilities improved under an earlier version of the Life Safety Code and for an evacuation capability rating. Kibbie commented on the importance of ensuring that architects and builders are aware of the standards. McKinley asked for information on waivers requested or granted in regard to the sprinkler requirement for assisted living facilities.

ARC 3050B No questions on amendments to ch 55 concerning the fire fighting equipment revolving loan fund.

ARC 3051B No questions on proposed amendments to ch 55.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

ARC 2987B No questions on involuntary discharge or transfer of residents of long-term care facilities.

ARC 2986B No questions on an exception to the licensing requirement for senior citizen centers or nursing homes that offer bingo games at no charge.

ELDER AFFAIRS DEPARTMENT Mark Haverland represented the department. Other interested parties included Cindy Haverkamp of the Iowa Center for Assisted Living and Janet Specht of the University of Iowa College of Nursing.

ARC 3002B and

ARC 3001B Haverland reported receiving many comments on the noticed rules for adult day services and assisted living facilities and stated that these results-oriented rules reflect the fact that residents of facilities have increased levels of frailty and dependence due to the desire of elder Iowans to age in place and to receive the same care in adult day facilities as in nursing homes. Haverland indicated that the rules allow some flexibility in composition of the interdisciplinary team; whether or not residents have showers in their rooms; occupancy agreements; and admission documents. Haverland noted that the department is awaiting a response from the board of nursing regarding the possibility of delegation of medication management and indicated that the rules will reflect the position of the board.

Discussion pertained to transfer criteria, the role of the family members, avoiding overregulation and providing potential for new models. Haverland stated that participants will approve all aspects of their care unless decision-making authority has legally been assigned to someone else. Lundby requested a copy of all comments received. Haverland noted that an annotated list of comments received will be available on the department's Web site and agreed to provide that list and a side-by-side comparison of statute and rules to Lundby, as well as to Royce for distribution to the committee. McKinley commended the department's efforts to be flexible.

Haverkamp voiced the opinion that several provisions go beyond statute and expressed a hope that written comments submitted will be considered and reflected in the final rules. Specht expressed a desire that the rules include a waiver provision for a demonstration project for new research-based practices and options for rooms with reduced space and rooms without toilets and sinks. Haverland responded that most in the industry overwhelmingly want to retain the requirement for toilets and sinks in the residents' rooms and that the legislature did not approve the department's request for special classifications that would allow for increased flexibility. In response to McKinley's questions about whether the department has the authority to grant a waiver, Gentry expressed the belief that such a waiver would be beyond the department's authority and that historically the legislature has been unwilling to delegate public policy decisions to state agencies. Eichhorn disagreed, asserting that the department should make allowance for more options in assisted living arrangements. Specht maintained that needs of persons with dementia are different from the needs of those without dementia.

ARC 3000B No questions regarding elder group homes.

Adjourned The meeting was adjourned at 4:10 p.m.

Respectfully submitted,

Kathleen K. Bates

APPROVED:

Chair George Eichhorn

Vice Chair Paul McKinley